

Pages 1 - 9

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE WILLIAM H. ALSUP

UNITED STATES OF AMERICA, )  
)  
Plaintiff, )  
)  
vs. ) No. CR 16-0440 WHA  
)  
YEVGENIY ALEKSANDROVICH NIKULIN, )  
) San Francisco, California  
Defendant. ) Tuesday  
) July 24, 2018  
\_\_\_\_\_) 2:00 p.m.

**TRANSCRIPT OF PROCEEDINGS**

**APPEARANCES:**

**For Plaintiff:** DAVID L. ANDERSON  
United States Attorney  
1301 Clay Street  
Suite 340S  
Oakland, California 94612  
**BY: MICHELLE J. KANE, ESQ.**  
**ASSISTANT UNITED STATES ATTORNEY**

DAVID L. ANDERSON  
United States Attorney  
150 Almaden Boulevard  
Suite 900  
San Jose, California 95113  
**BY: MATTHEW A. PARRELLA**  
**ASSISTANT UNITED STATES ATTORNEY**

**For Defendant:** LAW OFFICE OF VALERY NECHAT  
Law Chambers Building  
345 Franklin Street  
San Francisco, California 94102  
**BY: VALERY NECHAY, ESQ.**

**Reported By: Debra L. Pas, CSR 11916, CRR, RMR, RPR**  
Official Reporter - US District Court  
Computerized Transcription By Eclipse

Debra L. Pas, CSR, RPR, RMR, CRR  
Official Reporter - U.S. District Court - San Francisco  
(415) 431-1477

Tuesday - JULY 24, 2018

2:06 P.M.

P R O C E E D I N G S

---000---

(Defendant present, in custody.)

**THE CLERK:** Calling Criminal Action 16-440, United States versus Yevgeniy Aleksandrovich Nikulin.

Counsel, please approach the podium and state your appearances for the record.

**MS. KANE:** Good afternoon, Your Honor. Michelle Kane and Matthew Parrella for the United States.

**THE COURT:** Good afternoon.

**MS. NECHAY:** Good afternoon, Your Honor. Valery Nechay on behalf Mr. Nikulin, who is present and in custody.

**THE COURT:** Welcome to both of you.  
Our interpreter, have you been sworn in this case?

**THE INTERPRETER:** Yes, I have.

**THE COURT:** And what's your name?

**THE INTERPRETER:** Marina Brodskaya, certified Russian interpreter.

**THE COURT:** Thank you.

**THE INTERPRETER:** Thank you.

**THE COURT:** So we are here to see how things are going with the discovery and whether or not there is any need for a mental examination.

**MS. NECHAY:** I will begin, Your Honor. We received

1 additional discovery last week, and our understanding is that  
2 there is additional discovery that's going to be sent out  
3 today. And so I believe that we are making steady progress  
4 towards that.

5 In addition, we are still in the process of trying to  
6 obtain medical records from Santa Rita jail. The woman who we  
7 were in contact with at the head of that department was  
8 unresponsive for a few weeks right after we had the last court  
9 date on June 26th, and I believe she was just on an extended  
10 vacation. So we are still exercising our due diligence and  
11 obtaining those records.

12 As such, our suggestion is to put this matter on for a  
13 further progress of those records in about a month's time, and  
14 we have discussed some of those dates with the AUSAs.

15 **THE COURT:** Ms. Kane.

16 **MS. KANE:** Yes, Your Honor.

17 As defense counsel has stated, we have complied with the  
18 scheduling order that we stipulated to following our last  
19 appearance. Discovery has proceeded and the defense is now  
20 reviewing what we have produced.

21 **THE COURT:** How much more do you have to produce?

22 **MS. KANE:** We do not have any particular items at  
23 this point to produce.

24 Discovery, of course, our obligations are always ongoing.  
25 That doesn't mean more items might not come into the

1 Government's possession, but at this point we have nothing  
2 further.

3 **THE COURT:** I thought counsel just said you were  
4 going to be producing more today.

5 **MS. KANE:** It has gone out today.

6 **THE COURT:** It's already gone out. How much was  
7 that?

8 **MS. KANE:** I -- it's difficult to quantify the pages,  
9 Your Honor.

10 As the Court is aware, much of the discovery is electronic  
11 in this case. So the items are not all paginated individually.  
12 So it could be a couple thousand pages maybe? 1,000? 2,000?

13 It's very difficult for me to say. I wouldn't want to  
14 misstate it.

15 **THE COURT:** Are they in Russian?

16 **MS. KANE:** Most of what has gone out is not. Most of  
17 it is FBI reports and attachments to those reports, but there  
18 is electronic evidence that is in Russian.

19 **THE COURT:** Do you speak Russian?

20 **MS. NECHAY:** I do, Your Honor.

21 **THE COURT:** That's good.

22 With respect to the defendant's behavior in and out of  
23 court, what can you tell me about that, on the mental exam  
24 question?

25 **MS. NECHAY:** Well, Your Honor, I think we are still

1 experiencing some challenges.

2       However, I believe that our last statement to the Court on  
3 the June 26th date was that we were -- before we wanted to make  
4 a formal request to the Court, we wanted to review the  
5 documents provided by Santa Rita court mental health  
6 evaluations, and so we would still like to obtain those before  
7 we formally --

8           **THE COURT:** What is taking so long? When did you ask  
9 for those documents?

10          **MS. NECHAY:** We've asked every single week since the  
11 last court date. And I believe -- there has been multiple  
12 emails and voicemails.

13       My colleague, Arkady Bukh, who is the co-counsel in this  
14 matter, is in touch now. So I believe they have started the  
15 process over. I hope that we will be able to get those records  
16 in an orderly fashion very soon. And so I would just be  
17 requesting one further date so that we can exercise our due  
18 diligence and --

19          **THE COURT:** I'm going to give you a further date, but  
20 maybe not that far out.

21       Here is what we're going to do. I am worried about the  
22 delay here. Am I here in two weeks, Angie?

23          **THE CLERK:** Yes, Your Honor.

24          **THE COURT:** All right. In two weeks we're going to  
25 come back. And you will subpoena -- you, the lawyer, will

1 subpoena. By the end of this week, you will have served the  
2 subpoena on the mental health people at Santa Rita.

3 **MS. NECHAY:** Understood, Your Honor.

4 **THE COURT:** And request whatever documents you want,  
5 and they will be returnable on or before that hearing date.

6 And the subpoena must be for them to appear in this  
7 courtroom -- it actually will be the one down the hall, but  
8 here in this courthouse and explain themselves as to why they  
9 have not been cooperating with you.

10 **MS. NECHAY:** Thank you.

11 **THE COURT:** Now, if it turns out they don't know  
12 anything about this, you might be in trouble, but I have a  
13 feeling you're telling me the truth and that they have been  
14 delaying. This will be the end of the delay.

15 So we're going to get to the bottom of it in two weeks.  
16 So you must serve a subpoena for them to appear in court and  
17 bring the documents. So I will order them to turn them over to  
18 you, if they haven't already done that.

19 **MS. NECHAY:** Understood, Your Honor. We will do  
20 that.

21 **THE COURT:** Now, if it turns out that after you've  
22 served the subpoena that they say: Oh, here. They give them  
23 to you, and you're perfectly satisfied and you don't need  
24 anything more, I don't know. Maybe -- I want them to appear  
25 anyway.

1           **MS. NECHAY:** Okay.

2           **THE COURT:** I don't want there to be more problems.

3 See, we've got a trial date. When is it, January?

4           **MS. KANE:** January 28th, Your Honor.

5           **THE COURT:** What's going to happen here, I've learned  
6 the hard way, is that come December defense counsel will say  
7 the following: We have now reached the point, Your Honor,  
8 where we feel a mental exam is needed. And then I will have no  
9 choice. I will have to kick out the trial. That is the way  
10 this can often go.

11           I want to head that off by getting to the bottom of it now  
12 before we have the -- before we have a jury on the verge of  
13 coming in.

14           So you should be helping her get these documents, but I'm  
15 going to help you. You're going to do the subpoena route by  
16 the end of the week, and we're going to -- it's going to be  
17 returnable in two weeks from today.

18           **MS. NECHAY:** Thank you, Your Honor. Understood.

19           Can we please just clarify the next court date?

20           **THE CLERK:** August 7th at 2:00 o'clock.

21           **THE COURT:** Is there any other roadblock that I can  
22 deal with today?

23           **MS. NECHAY:** I believe that's all, Your Honor.

24           **THE COURT:** Are you meeting with your client?

25           **MS. NECHAY:** Yes.

1           **THE COURT:** Are you getting a facility where you can  
2 meet with your client at Santa Rita?

3           **MS. NECHAY:** That's correct, Your Honor. We have had  
4 a substantial number of visits, both in person and telephonic.

5           **THE COURT:** Anything I can help the Government with  
6 today?

7           **MS. KANE:** No, Your Honor. Although we do need to  
8 exclude time for -- based on the Speedy Trial Act, given where  
9 we are. I would suggest that we exclude time through the trial  
10 date, since we do have a trial date set.

11           **THE COURT:** That's what we should do, unless you want  
12 a sooner trial date.

13           **MS. NECHAY:** No, that's not the defense preference.

14           **THE COURT:** Exclude time for effective preparation  
15 all the way up to the date of the trial.

16           **MS. NECHAY:** Thank you.

17           **THE COURT:** What is the date?

18           **MS. KANE:** January 28th, Your Honor.

19           **THE COURT:** Agreed?

20           **MS. NECHAY:** Yes.

21           **THE COURT:** For that reason we will exclude time all  
22 the way up to January 28th.

23           **MS. KANE:** And I would note that in addition --

24           **THE COURT:** Do one of those stipulated orders.

25           **MS. KANE:** I will, Your Honor.



1 In addition to effective preparation of counsel, this case  
2 has also been designated complex.

3 **THE COURT:** For that reason, too.

4 Okay. I think we're done. Thank you.

5 **MS. NECHAY:** Thank you, Your Honor.

6 **MS. KANE:** Thank you, Your Honor.

7 (Proceedings adjourned.)  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**CERTIFICATE OF OFFICIAL REPORTER**

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

*Debra L. Pas*

---

Debra L. Pas, CSR 11916, CRR, RMR, RPR

Thursday, December 17, 2020